IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

Appeal Nos. ST/652 – 654/2012

(Arising out of Order-in-Appeal Nos. 56 – 58/2012 dated 16.10.2012 passed by the Commissioner of Central Excise (Appeals), Madurai)

1. M/s. The Orient Processors : Appellants
2. M/s. The Orient Industries
3. M/s. The Orient Color Art Printers

Vs.

CCE & ST, Tirunelveli : Respondent

Appearance

Shri M. Kannan, Advocate,
for the Appellant

Shri B. Balamurugan, AC (AR)
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: **09.01.2019**
Date of Pronouncement: **25.01.2019**

FINAL ORDER No. **40164-40166/2019**

Per P. Dinesha

The appellant is a manufacturer of printed materials, had imported printing machines from various suppliers during the impugned period ie., 2008-09 to 2009-10. Such imported machines were installed by the manufacturer/supplier through their representative/branch. A Show Cause Notice (SCN) dated

30.06.2011 was issued covering the above period alleging interalia that the appellant had received the services under the category of "Erection, Commissioning or Installation" from the suppliers of machines who had their permanent address or usual place of residence in a country other than India and that therefore the appellant was liable to pay service tax under reverse charge mechanism in terms of Section 66 A of the Finance Act, 1994. The said SCN culminated in the Order-in-Original dated 31.01.2012 by which the proposals made in the SCN got confirmed. On appeal, the first appellate authority, Commissioner of CE (Appeals), Madurai, vide Order-in-Appeal No. 56/2012 dated 16.09.2012 has upheld the order of the adjudicating authority thereby rejecting the appeal. Aggrieved, the appellant is before this forum.

2. Heard the Ld. Advocate, Shri M. Kannan, appearing for the assessee and Ld. DR, Shri B. Balamurugan, appearing for the Revenue. During the course of hearing, Ld. Advocate submitted interalia that the appellant purchased machinery whereas no separate payment was made towards the installation of the same; that the installation was carried out by the supplier's representative/branch and hence Section 66A does not apply; that the Bill of Entry showed that it was for supply of machines per se which is not taxable; that it was the case of mere sale and purchase; that neither the appellant would be considered as an agency for the machines purchased by it nor could the supplier be

considered as an 'agency' for the machines supplied by it, to allege the services of 'Erection commissioning or installation' by an agency; that the Bill of Entries are dated 07.10.2008, 21.05.2010 and 10.11.2008 and the SCN having been issued on 30.06.2011, the proceedings are barred by limitation, etc.

3. Per contra, Ld. DR supported the findings of the lower authorities. He also submitted that the proforma invoices were raised by the supplier including the value of installation and therefore, the fact that the appellant did not pay towards the installation separately, is incorrect.

4.1 We have considered the rival contentions, gone through the documents placed on record, have also gone through the decisions relied on by the Ld. Advocate during the course of the arguments.

4.2 Admittedly, the Bill of Entry reflects sale of machinery per se, by the foreign supplier and the same was purchased in India by the appellant. The installation is the subsequent activity carried out by the representative or at the supplier's instance through its branch in India and apparently the appellant has no role in choosing the service provider for providing the installation service. It is also an undisputed fact that there is no separate understanding or agreement/contract for installation (erection, commissioning or installation service), between the appellant and its foreign supplier of machinery. Thus, the primary activity is the sale and purchase and the installation could utmost be considered as other part of the same coin perhaps owing to subject/specific knowledge or intricacies involved in operation of such machines. In such a situation, the sale is held to be complete only when such imported machines are installed. It is not the case of the Revenue that there is separate agreement for providing the service of erection, commissioning or installation and it is not even its case that the main purpose of invoices was for providing the services of installation (erection, commissioning and installation), nor is the case of the Revenue that the payment as per the invoices were made only towards the installation service. In view of the above discussions, it appears that the fact of sale and purchase of machinery has been side-lined and the fact of installation is bloated to make it as though that is the only activity involved.

4.3 The alleged service and installation has been carried out by the suppliers through their branches and hence we are of the view that Section 66 A has no role. In view of the above, we do not find any merits in the impugned order as also the demand, for which reason we set aside both. Consequently, appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the open Court on **25.01.2019**)

(P.DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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